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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO ALLENDE RUIZ,

Defendant and Appellant.

B233472

(Los Angeles County  
Super. Ct. No. BA025987)

APPEAL from an order of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

Gail Ganaja, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Eric E. Reynolds and  
Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

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Fernando Allende Ruiz appeals from the trial court's order revoking his probation and placing into effect a previously stayed four-year state prison sentence, contending the trial court abused its discretion when it revoked his probation. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In March 1991, Ruiz pleaded guilty to a single count of possession of cocaine for sale. (Health & Saf. Code, § 11351.) Imposition of sentence was suspended, and Ruiz was placed on probation with various terms and conditions.

A hearing was scheduled for December 17, 1991, based on a report that Ruiz had failed to report to his probation officer. The trial court summarily revoked probation and issued a bench warrant when Ruiz failed to appear for the hearing.

On December 30, 2010, Ruiz appeared in court on the outstanding bench warrant, and it was recalled. The trial court remanded Ruiz to custody and set a probation revocation hearing and ordered a supplemental probation report.

On February 28, 2011, evidence was introduced at the probation revocation hearing that Ruiz had been removed from the United States by federal immigration authorities at least twice, each time unlawfully reentering the United States while on probation. According to Lisa Zamora, a supervisory detention and deportation officer with the United States Immigrations and Customs Enforcement and Removal Operations, Ruiz was arrested and deported by the Immigration and Naturalization Service on July 15, 1991. Ruiz was later arrested on October 17, 2010, by Customs and Border Protection officers and removed from the United States on October 18, 2010. Prior to his removal, Ruiz gave a "sworn statement" to the officers that he had lived and operated a business in Los Angeles from 1973 until 2007, when he decided to go back to Mexico to start another business. Zamora testified Ruiz was again arrested by Customs and Border Patrol officers on December 20, 2010, and transferred to the custody of the Los Angeles County Sheriff's Department on the outstanding warrant.

Ruiz neither testified nor presented other evidence in his defense.

After continuing the hearing to April 13, 2011, the trial court found Ruiz had violated probation by failing to report to his probation officer.<sup>1</sup> The supplemental probation report recommended Ruiz be found in violation of probation, but continued on probation until it expired. Defense counsel requested that Ruiz serve 365 days in county jail and that his probation terminate upon his completion of the local custody time.

The trial court determined that reinstating Ruiz on probation would not serve the interests of justice and ordered into effect the previously stayed four-year state prison sentence.

### **DISCUSSION**

Ruiz asserts the trial court abused its discretion by refusing to reinstate probation. Ruiz argues, as he did in the trial court, that he had not reoffended in the 20 years since his March 1991 drug conviction, and during that time had “contributed to society in a positive manner” by working in business. He also points to the probation officer’s recommendation that Ruiz’s probation be allowed to expire and maintains it was the only reasonable outcome in support of the interests of justice.

“‘A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.’ [Citation.] A court abuses its discretion ‘whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.] We will not interfere with the trial court’s exercise of discretion ‘when it has considered all facts bearing on the offense and the defendant to be sentenced.’ [Citation.]” (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) As Ruiz acknowledges, the trial court abuses its discretion only when its decision “exceeds the bounds of reason, all of the circumstances being considered.” (*People v. Giminez*

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<sup>1</sup> There is no transcript of the probation violation hearing as it was continued on April 13, 2011. However, the April 13, 2011 minute order shows that probation officer Wanda Tharpe, who prepared the supplemental probation report, testified on behalf of the People.

(1975) 14 Cal.3d 68, 72.) Moreover, “[w]hen the question on appeal is whether the trial court has abused its discretion; the showing is insufficient if it presents facts which merely afford an opportunity for a difference of opinion. An appellate tribunal is not authorized to substitute its judgment for that of the trial judge. [Citation.]” (*People v. Stewart* (1985) 171 Cal.App.3d 59, 65.)

Ruiz’s abuse of discretion argument amounts to nothing more than an attempt to have us reconsider the evidence, and substitute our judgment for that of the trial court, by urging us to give greater weight to claims of having a “crime-free life” and “gainful employment” in the years following his 1991 conviction. We cannot. Furthermore, the record amply supports the trial court’s decision to deny reinstatement of Ruiz’s probation in the interests of justice. Ruiz’s claim to the contrary notwithstanding, he had not led a crime-free life since 1991, having entered the country illegally at least twice during the pendency of this action. And, over the years Ruiz had lived and worked in Los Angeles, he could have contacted his probation officer, but failed to do so. While Ruiz may not have had the intent to abscond from probation, he certainly had the intent to evade supervision. As for the supplemental probation report, the trial court was neither bound by the report nor required to provide reasons for rejecting the probation officer’s recommendation. (*People v. Downey, supra*, 82 Cal.App.4th at p. 910; *People v. Butler* (1988) 202 Cal.App.3d 602, 607-608.)

### **DISPOSITION**

The order is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.